HIGH COURT OF UTTARANCHAL AT NAINITAL

Criminal Misc. Application No. 1055 of 2001

(Old No. 3005 of 1988)

1. Rakesh Kumar @ Vikki
   S/o Govind Ram
   R/o Sharvan Nath Nagar, Haridwar
   District Saharanpur
2. Parmender S/o Bahraj Singh
   R/o village Butrada
   P.S. babri
   District Muzaffarnagar
   At present R/o Shreenath Nagar
   Jwalapur
3. Premveer Singh S/o Balidan Singh
   R/o village Nagla Harroop
   P.S. Ahmadgarh
   District Bulandshahar
   At present Shravanth Nagar,
   Haridwar
4. Shamim S/o Khursheed
   R/o Mohalla Chowk Shadaat
   Shikarpur
   P.S. Shikarpur
   District Bulandshahar .....Applicants

Versus

State of Utrtaranchal .....Respondent

Hon'ble J. C. S. Rawat, J.

The petition under section 482 Cr.P.C. has been filed for quashing the criminal proceedings against the applicants pending before the Munsif Magistrate, L.C.C. Haridwar in case No.577/1987 under section 307 I.P.C.

Brief facts of the case are that a non-cognizable report was lodged on 29.1.1987 under section 504 I.P.C. stating therein that on 28/29-1-1987 at about midnight to the applicants came to Ahuja Petrol Pump on a Fiat Car and asked for petrol. When the informant Lakshman Das refused to give the petrol as he did not have the keys, the applicant-Rakesh Kumar and Premveer took out a knife and a pistol respectively. On exhortation of the other co-accused, Rakesh Kumar assaulted the informant with the knife which struck his coat.

Thereafter, the police investigated the matter without having prior order of the learned Magistrate under section 155(2) Cr.P.C. and the chargesheet dated 9.2.1987 was submitted under section 307 I.P.C. against the applicants. Feeling aggrieved to the said chargesheet, the applicants have come up before this Court.

I have heard Sri Vivek Shukla learned counsel for the applicants and learned A.G.A. for the State and perusal the record carefully.

It has been held in **Union of India Vs. Prakash P. Hinduja 2003 SCC (Cri) p/1314** that Section 482 Cr.P.C. saves inherent powers of the High Court and such a power can be exercised to prevent abuse of the process of any court or otherwise to secure the ends of justice. The grounds on which the prosecution initiated the proceedings can also be quashed. The grounds on which power under section 482 of the Code can be exercised to quash the criminal proceedings are : (i) where the allegations made in the FIR or complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused, (ii) where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused, (iii) where there is an express legal bar engrafted in any of the provisions of the 'Code' or the Act concerned to the institution and continuance of the proceedings. But this power has to be exercised in a rare case and with great circumspection.

In the light of above guidelines, I have to examine the case in hand. It was contended that the report was

lodged under section 504 I.P.C. and no injuries were received at the time of accident and no medical examination was conducted. It was further contended that the police had not taken the prior permission of the learned Magistrate to investigate the matter, which is provided under section 155(2) Cr.P.C. and the police actuated by oblique motives and converted the case under section 307 I.P.C. and submitted the chargesheet. The learned counsel for the applicants further contended that there was no motive behind the incident and there was no allegation in the F.I.R. with regard to the section 307 I.P.C. It was further contended that no inference can be drawn that the accused had an intention to kill the complainant because they assaulted the informant ones. In case, the intention to kill him, they would have assaulted several times and they could have killed the complainant.

The learned counsel for the applicants further contended that the police converted the case under section 307 I.P.C. for oblique motives and submitted the chargesheet against the applicants. The police should have first recorded the statement of the witnesses and thereafter the case would have been converted into under section 307 I.P.C. from section 504 I.P.C. It clearly reveals that the prosecution was initiated by the police for oblique motives. The Hon'ble Apex Court has held that if the High Court feels that there is any oblique motives behind the prosecution the High Court has jurisdiction to interfere with the proceedings.

The learned counsel for the applicants contended that it was a non-cognizable report and there was no prima-facie evidence before the police to implicate the accused under section 307 I.P.C. The learned A.G.A. fairly submitted that there is no medical certificate and

however there is a report under section 504 I.P.C. The first version of the report reveals that the report under section 504 I.P.C. was lodged and there was no intention to commit the murder of the complainant. As such, the report was lodged under section 504 I.P.C. only. There is no medical report on record which may shows that the complainant sustained the injuries at the time of the incident or not. It is further alleged that the accused assaulted the complainant by knife. The complainant did not sustained the injury and there was only a scratch on the coat. Therefore, this fact reveals that there was no intention to kill the complainant, as such there is no prima-facie case against the applicants is made out under section 307 I.P.C. However, perusal of the record reveals that there is a prima-facie case against the applicants under section 504 I.P.C.

In view of the above, the petition is partly allowed. The proceedings in case No.577/1987 under section 307 I.P.C., P.S. Jawalapur pending before the Munsif Magistrate, Haridwar are set-aside. However, it is made clear the Magistrate shall proceed against the applicants under section 504 I.P.C. according to law.

It has been reported by the C.J.M. concerned that the applicant No.2-Parmender has died and as such the proceedings against him is abated.

The parties are directed to appear before the court below.

(J. C. S. Rawat, J.)

Dated 11.5.2005

LSR